Supreme Court, U.S.
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No.94-1034

In the
SUPREME COURT OF THE UNITED STATES
October Term 1994

John Lucas, pro-se

Petitioner

v

Dr. Robert Hahn DrEd President
Dr. Vincent Crockenberg PhD Academic Dean
Stanley Carpenter. Esq.,Board of Ed
Paul Sutherland, Esq., regent
All of Johnson State College,Johnson,Vermont

On Petition for Writ of Certiorari
To The Vermont Supreme Court:Docket #94-015
Motion to Reargue Denied Aug 23, 1994

REPLY TO BRIEF IN OPPOSITION

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24pp

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TABLE OF AUTHORITIES

"Board of Curators of the University of Missouri v Horowitz", 435 US 78 (1978) pgs 11,13,17,19,20

"Goss v Lopez", 419 US 565 (1975) pg 4,13,15

Keyishian v Board of Regents", 385 US 589 (1968) pg 15

"Tinker v Des Moines School District", 393 US 503 (1969) pgs 15, 16

13th Amendment,United States Constitution pgs 13,14

20 USC 1232g, the Family Educational Rights and Privacy Act of 1974, aka the Buckley Amendment; 34 CFR 99, Buckley Regulations pgs 6,9,15

1 VSA 315-320: the Vermont Access to Public Documents Laws, 1975, pgs 13,20

16 VSA 12:Oaths(of public educators) 1969 pgs 10,11,12

Vermont Department of Education Regulations:

4300: Suspension of Students pgs 2,4

5100: Training and Certification of Teachers pgs 6, 12

Johnson State College Code of Conduct 1991-1992 pgs 5,6,17

Petitioner's Response Brief to Respondent's Brief in Opposition

Respondents pg 1:"...by teaching a Barre, Vermont history class under the supervision of a high school supervising teacher who, beyond serving as Petitioner's supervising high school teacher, has no affiliation with JSC."

Petitioner's Note: Dr. Wilgoren's status as "rogue" educator is noted in this Appendix, documentation pgs 15-21, as co-created documentation remains in his sole possession per college authority.

Respondents B:MISSTATEMENTS LAW/FACT

1.& 10: The arms length separation between attorneys and clients evaporates when Atty Carpenter,a respondent, passes total control to Paul Sutherland,the latter identified in court as the "4th Defendant" 10/19/93 (case file, Motion to Secure Documents), and in

light of 17 Jan 95 discoveries, this Appendix pgs 1-11 , as below:

Pgs 1-3, a 27 Apr 92 letter BY THE PETITIONER facsimile transferred from Carpenter's office to JSC BEFORE the PETITIONER mails this letter.Plaintiff's Vt. Supreme Court (exhibit) #8, request for JSC Department of Education appeal, was filed 20 Apr 92, with oral agreement to meet by 27 Apr 92 to resolve the issues .Vt Supreme Court (exhibit) #5, (pg) 3, indicates a closed door determination of the petitioner was conducted at the high school 27 Apr 92, by college AND high school supervisors.
Vt 4300 regulations (Appendix to Writ pgs 42-43) indicates that 27 Apr 92 is the LAST day of the SHORT TERM running suspension (7-27 Apr 92, less weekends and the intervening vacation week)of this teacher-student. (see #3, this brief).Clearly, Carpenter's 27 Apr 92 action affected the scholastic process, quashing internal procedures due and normal.

Pgs 4-5:a 5 May 92 facsimile transmission from Carpenter's office compared to Pgs 6-7: a 12 May 92 JSC letter from Dr. Towner, re: Graduate Committee process, is identical in wording save the last paragraph, excusing Dr. Tilley.

Pg 8: facsimile transmission, 06/02/1992 from Sutherland to JSC is IDENTICAL to:

Pg 11: The final decision of the Graduate Committee, RECEIVED by petitioner 3 June 92 (R/C/D 6/3/92) dated 2 June 92

Pg 9:"Post-it" notes over pg 8 indicate that neither committee members Black nor Whiting approved this decision PRIOR to notice to the petitioner,(arrival by USPS June 3 must be mailed June 2) and Chairman Towner, on vacation, is not even privy to this decision.The Graduate Committee is presented with a fait accompli by Sutherland, absent Towner input.

Thus Towner replies, pg 24, Appendix to Writ : answers F & H, as he does.The Graduate Committee Appeal step is completely controlled by Carpenter /Sutherland.

Respondents B:MISSTATEMENTS LAW/FACT

2: All documentation to the lower courts indicated that the "academic label" was contrived to promote "academic process".

3: Vt. 4300 regulations govern the suspension of students from class for disciplinary reasons,on short, long or emergency terms. Unless the college is now admitting that THE COLLEGE controlled the removal of the petitioner from the high school, with Wilgoren as agent provocateur and Principal Paterson as accomplice, the only administrative authority (the police were not called) that Principal Paterson has to remove a student-teacher is under the 4300 regulations,which necessitate "Goss v Lopez" minimums PLUS written notice, OR a full QUASI-JUDICIAL hearing,at the high school, after 27 Apr 92 (see #1 &10 above).Neither was afforded this teacher-student under the "academic level process", as below:

4:The Lamoille Superior Court description of the determinant "academic process" afforded this petitioner (Appendix to Writ pg 15 and

16) as well as the Vermont Supreme Court description (ibid, pgs 5, 7 & 8), are strikingly similar and parallel to the procedure found in the JSC Code of Conduct (Appendix this brief pgs 12,13 & 14, and before the lower courts in it's entirety)per POLICY ON ACADEMIC DISHONESTY,p27-28 (of the Code of Conduct).The first Code reference clearly notes that academic dishonesty is punishable under the COLLEGE CODE OF CONDUCT (published emphasis).The p27-28 referenced PROCEDURES are the procedures used to charge, adjudicate,sanction and provide appeal as regards the grading frauds.

While noting that the p27-28 procedures DO NOT allow EXPULSION as a sanction without filing a complaint with the Security Office (none was filed), the Court is drawn to the deconstructive language where the REPORT of fraud against a faculty member EQUATES with academic fraud itself.This subliminal "shoot the messenger" code is reinforced by the ex-post facto ruling of, surprise!!!,respondent

Sutherland, as documented (Appendix to Writ pg 25).

The ACTUAL JSCED charges (ibid pgs 18 & 19) are clearly allegations of code violations of both the Buckley Amendment and the Vt Dept.ofEd. 5100 regulations,creatures of public law.Respondents #4, Brief in Opposition, should read: The JSC Code of Conduct was INAPPROPRIATELY applied, by the college, to satisfy political, not academic, demands. 5:Petitioner's 1 Nov 93 "resubmission to the (Lamoille) Superior Court" pgs 32-49 (with separate evidence exhibits) clearly document that Drs. Tilley and Page ,as field supervisors, under Chairwoman Dr. Story, provided ALL 8 graduate students,petitioner included, and 8 undergraduate student-teachers LESS THAN 50% of the Vermont mandated field inspections;attached exhibit "10/19/93 Certification Fraud" indicates that 8 of these students were "certified" per the regulations by JSCED;that Dr. Page fails to complete the standard grading sheet for this teacher-student's "student teaching experience";that

this "clinical evaluation sheet" is signed 60+ days after expulsion from the licensing program,and that Principal Paterson's ALLEGATION of an ethics violation is, without attribution, the determining factor.In the Appendix to Writ (pg 23), Dr. Towner states that,disregarding an academic hearing official's request, "...Dr. Page preferred not to attend, and I had no power to compel her attendance." Dr. Page owes us all an explanation, else she remain derelict.Her 19 Mar 92 direct statement to the petitioner that he had failed his "internship" for "design flaws" is unrefuted before the courts.

6:Per the transcript of the 9 Apr 92 JSCED meeting, (Supplemental Brief and Appendix to Writ,material acquired 30 Dec 1994) Appendix pgs 32-35 clearly show that Tilley sent Lucas back to the high school to resolve an issue over the co-operative grading.Had Tilley approved of Wilgoren's "19 phantom assignments" prior to 9 Apr 92, the mystery of the "phantoms" would be an officially "closed issue" (ibid pg 53), Tilley having

"certified" Wilgoren's procedures, and thus Lucas would have taken no action, per Tilley's explanation.

7: Petitioner stands corrected;"black listing" was a conversation between Page and Lucas,10 Apr 92,via phone 06:30AM. I withdraw this from the pleadings, as I have never presented such to the courts.

8:Plaintiff's Lamoille Superior Court Exhibit 10/19/93 Grad. Comm(ittee) "Process" transcript of the Graduate Committee hearing,pgs 19-21, appellant officer Dr. Black states that he too is confused by the 9 Apr 92 "determination" thus ,stating finally: "...this letter did not state, in #1 what you did, in great detail...it does state what you did wrong" (pg 20-21), with this teacher-student requesting the "code book" that deciphers the "inferences" and "academic implications" (ibid).

9:Grad. Comm. "Process" (ibid): Towner statements (transcript) pgs 1, 13, 28-30, as well as the Towner summary (Appendix to Writ pg 22) indicate that Dr. Towner is not empow-

ered to see that "...every letter of the law is followed..."(transcript pg 30)

#11 & #13 : Re: Sutherland/Carpenter as "regent" appellant officers (see #1 & #10 this brief);JSC "Academic Dean Appeal Decision" fails to address, minimally, teacher-student's rebuttal (Lamoille Superior Court Exhibit :10/19/93 Academic Dean Mtgs, 9 Feb 92 ltr to Dean Crockenberg)of the JSCED Buckley Amendment "confidentiality requirement" promulgated as 9 Apr 92 charge #1 "academic failure". No less than four (4) legal reasons for a JSCED misread of the Buckley Amendment are not addressed.Page 20 of Writ indicates that Sutherland,as with the Graduate Committee "decision" (see #1 & #10), was aware and did not address the "federal" confidentiality issue, a JSCED fiction.Per #1 & #10 this brief, Carpenter's involvement with the appeal process preceedes 21 May 92, the date noted on the "Academic Dean Final Appeal" decision of 23 Mar 93.

#12: An attorney stating to a student that he considers the student's legal requests "harassment" (Appendix to Writ, pg 26-27) implies legal knowledge that the requests are invalid, and thus continuing to request documents is actionable in some legal manner by the college.

#14: Petitioner stands corrected.Respondent Carpenter is "corporate agent of record". Atty/Respondent Sutherland's Law Firm is, per Appendix this brief, pg 20, the legal representative of the college.

#15:Re: "academic sedition", see Supplementary Brief to Writ pgs 13 & 14 regarding "generic insubordination" and Respondent Hahn's "...unwillingness to accept the reasoned judgements...".(Appendix to Writ pg 32)Re: "state actors" and their behaviors; absent documented , signed Oaths per 16 VSA 12,(Vermont) Supreme Court (Exhibit) #3,Drs. Tilley, Story and Page are "state educational bureaucrats" without legal authority to legally grade.Assuming a performance con-

tract, Drs. Tilley, Story and Page are clearly in violation of 16VSA12 legal mandates.

#16: Per pgs 22-23, Appendix this Brief, the transcript of the 19 Oct 93 LaC hearing refutes this #16 objection.The transcript before the Court duly notes that Sutherland directly stated that this teacher student was academically "...failing his internship ..", a "fact" only AFTER this teacher-student filed WRITTEN grievances against academic fraud.Sutherland's statements, at the last moment, directed the LaC court to assume academic decision based solely on jurisdiction, not available fact. (see Appendix to Writ, pg 14).Thus JSC "process" meets "Horowitz" guidelines.

#17: The original 10/19/93 "Motion to Secure Documents of the 4th Defendant (Sutherland) is an open motion neither court has ruled on.The "Discovery Motion",to actually acquire these documents, was denied by the Vt. Supreme Court upon re-argument request

#18:Despite voluminous exhibits by the Plaintiff that JSCED was clearly outside published academic regulation and Vermont State Law (16VSA12 and VtDept-ofEd 5100, minimally), the LaC Superior Court stated, without reason, that academic performance was the reason for the dismissal.The highly unusual nature of the dismissal,the speed with which it occurred,the lack of normal documentation,all of these mitigate the court's unreasoned determination, when careful and delicate sifting of exhibits before the court would dictate that prior to WRITTEN grievance, no academic failure was apparent.

19:From the Supplementary Brief and Appendix, the extant record of the 9 Apr 92 JSCED "academic" meeting, it is abundantly clear that this teacher student raised substantive federal civil rights, constitutional guarantee as well as federal code statute violations as noted.(Tilley, Story and Page are SENIOR mentors of teachers;Story holds a Vermont Principal's license.) Unless counsel is stating that the teachers of teachers are

legitimately ignorant of the laws under which they must operate, the substantive reason behind the "ersatz" academic process is to wave off the apparent constitutional stresses, those "...career ending liabilities" Dr. Tilley spoke forcefully of. This petitioner sought relief under the Vermont Access to Public Documents statutes, and only when the Superior Court opened the door, via "Horowitz" and "Goss v Lopez", did the petitioner expand in defense.Before the Vermont Supreme Court, there can be no question that grievance, assembly, property, liberty, and free service absent apprenticeship status rights were amply present.Only when the Vermont Supreme Court fails to establish the contract between the students and the state was the 13th Amendment violation apparent, an action of the court, not this petitioner.That, from the beginning, the JSCED authorities did not recognize that this particular "internship" was no more than an uncompensated "graduate assistant

teaching experience" subject to latent 13th Amendment considerations is to admit that JSCED is totally inept and incompetent to follow it's own published regulations.

20: Petitioner stands corrected.

21: Respondents initially labeled, for the courts, the intricate oral/written grievance cum expulsion/suspension outcome as a generic "incident" (Lamoille Superior Court, ALL Motions for Summary Judgement,per case files).Which of the "many statements" made to the Vermont Supreme Court are they objecting to? In #19 above, some legal statements are addressed.Hopefully,we are not returning to the "incident" method of imprecise statements.As per below:

#22: "Process Summary-Facts v Deconstructions",is quite apparently an appendage appended to an appendix.This essay (unpublished) regarding the "morphing" of language, was adopted to the facts of this case to illustrate how those who control the labels control the process. If the Court wishes, Petitioner will edit this section

and "insert" the product into the Writ per respondents' complaint.Most likely, since this section touches mightily on the issue of just when and where academic crosses into political, and thus how and why "Horowitz" needs careful reading by the courts to be correctly used, the Respondents seek to banish this section on technical grounds.

RESPONDENTS C; GROUNDS FOR DENIAL

Clearly, the Respondents and their subordinates, having traditionally engaged in pre-"Keyeshian" 19th century educational practices by ignoring 16VSA12,prefer not to change. This teacher-student has drawn a clear outline demonstrating how genuine Academic Due Process is subverted by custom and collegiality,where student performance measures meet predestined outcomes.To conceal these unethical,immoral, and thus illegal behaviors, the respondents rush past "Keyeshian","Tinker v Des Moines", "Goss v Lopez" and the Buckley

Amendment, hanging the sign:Academic Procedure-Do Not Disturb,before the lower courts. Since the facts clearly indicate that the dismissal was not for academic/clinical deficiencies, only the talismantic reliance of the courts on the "educational authorities" self applied labels can explain the lower courts' decisions.Doubly disturbing is the clear involvement of "educational attorneys" in manipulating the "on-campus" processes in anticipation of a legal,court appeal.

Just as the Court once ruled that Quaker adolescents passively protesting, perhaps as surrogates, a distant,foreign entanglement, were of "importance to the public" in the process of educating the public,so too the Court should find that a quashed, "Tinker-like" protest of actions within the classroom is of public importance.With a heightened public discourse regarding public education, to the point of suggesting that most public education just doesn't work, on balance this appeal needs to be heard.

That the Vermont Courts erred in applying "Horowitz" attests to the seductive nature of the bifurcated due process "Horowitz" allows.Completely absent from either Courts' decision is a substantive determination that the "educational authorities" were within published, recognized academic disciplines before, during or after Petitioner's written grievances notices were published. A cornerstone of the academic prerogative granted under "Horowitz" (op cit at 92 [7], [8]) mandates such a determination, that "...no showing of arbitrariness or capriciousness..." has tainted the academic determinations. Yet clearly this brief demonstrates that the "academic level procedures" afforded this teacher-student are virtually synonymous and identically parallel to the "JSC Code of Conduct 1991-1992" academic level ACADEMIC DISHONESTY POLICY,which this appellant clearly pointed out to the lower Courts, to no avail.(Plaintiff's 1 Nov 93 Resubmission to the Superior Court, p51;Appendix to Writ, pg 72, 75, 84, 85,to the Vermont Supreme

Court).The Superior Court's determination that "...Johnson State College did not have any formal records setting forth substantive or procedural criteria providing due process to graduate students" (Appendix to Writ, pg 15) does not explain how the academic level, ACADEMIC DISHONESTY POLICY procedure, save the leeetle problem of defining dishonesty, was the procedure used in campus determinations which expelled this teacher student.

A determination by the "educational experts" that the grievance(s) were false, malicious, and/or libelous, could only proceed AFTER a substantive investigation(s) into the grievances had first occurred. The record clearly shows that none of the three (3) grievances filed on campus were other than IGNORED.Two INTERNAL high school investigations have yet to report.

Prior academic due process decisions never addressed the capacity of rogue "educators" to manipulate on-campus procedures in anticipation of a court challenge which nominally would fall under

"Horowitz" precedents, save Thurgood Marshall's dissent in "Horowitz" itself (op cit. 97-107). That the college provided ample appeal venues is no substitute for "...an expert evaluation of cumulative information..."(op cit 90), a surfeit,not surplus, in this case, denying a genuine academic label to the determinations.The day that Justice Marshal's partial dissent predicted, when administrators seek, inappropriately (op cit 106 [21]),an "academic" shield administratively constructed to conceal academic fraud, is today.

From the issue of grievance at the college, first legally raised in oral arguments before the Lamoille Superior Court,(Appendix this Brief,pg 24) through the presentations to the Vermont Supreme Court, this pro-se teacher-student has struggled with latent discovery of both the facts and the law.The college abounded with "educational experts" knowledgeable enough to recognize the dangers of their acts and avoid court intervention. They did not, and

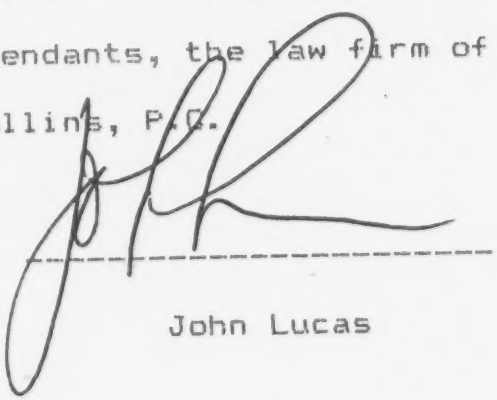
with the Vermont Court's talismantic reliances on these "expert's" "academic labels" through final determination, the latent constitutional issues brought to the Court are not moot, but the cumulative errors that a false "Horowitz" determination did, in fact, engender.

This petitioner seeks a review of "Horowitz" precedents upon which the Vermont Courts' determinations rest.Regardless of what route the U.S. Supreme Court chooses, striking "Horowitz" for a more finite ruling, or rejecting the Lower Courts' application of "Horowitz", the original action under the Vermont Access to Public Documents Laws will proceed at the Superior Court level, as the Respondents' Motion for Summary Judgement, resting totally on "Horowitz", will be voided. (Appendix this Brief, Decision of Judge Alan W. Cook,p 22).

In Morrisville, Vermont, February 3, 1995

P.S. John Lucas pro-se

I Hereby certify that on this date,the 3RD of February 1995,the undersigned pro-se teacher-student, petitioner to the Supreme Court of the United States, October 1994 term of the Court, did deliver pursuant the statures,four (4) copies of this Reply (Brief) to Respondents' Brief In Opposition, and Appendix to his Brief in Response to Opposition,plus an additional copy, five (5) in all, to Michael Harris,Esq., of the firm Sutherland and Collins, by 1st Class Mail, United States Postal Service, Postage Pre-paid, to 112 Lake Street, P.O.Box 1623, Burlington, Vermont, 05402-1623, the official mailing ad-dress of the Agent of Record of the Defendants, the law firm of Sutherland and Collins, P.C.



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